IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE NINTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO: 5850 of 2002

Between:

M/s Sairam Wines, Mulugu Village and Mandal,

Warangal District, rep. By its Licensee Partner T. Venkateswar Reddy

Aged about 40 years, R/o Mulugu Village and Mandal,

Warangal District.

... PETITIONER

AND

1. The Commissioner of Prohibition & Excise,

Nampally, Hyderabad.

2. The Deputy Commissioner of Prohibition and Excise, Warangal.

3. The Prohibition and Excise Superintendent, Warangal District.

4. M/s. Sri Venkateswara Wines, Rep. By its Licensee

T.Prasada Rao, D.No.7-73/1, beside Police Station, Mulugu

Warangal District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent in permitting the 4th respondent in shifting the shop nearer to the petitioners shop i.e. Tirumala Kalamandir Area which

is below 100 meters in Rc.No.17864/2001/G1, dated 7-12-2001 is illegal, contrary to the guidelines and circular and consequently set aside the shifting permission of the 4th respondent shop vide Rc.No.17864/201/G1 of the first respondent.

For the Petitioner: MR.D.V.REDDY, Advocate (Not present)

For the Respondent No.1 to 3: GP FOR PROHIBITION & EXCISE

The Court Made the Following Order:

ORDER:

None appears for the petitioner. Heard the learned Government Pleader for Prohibition and Excise.

The petitioner, who obtained IL-24 licence for Mulugu Village of Warangal District, filed the present Writ Petition questioning the permission granted in favour of the fourth respondent for shifting his IL-24shop within 100 meters from the petitioner's existing shop.

In the counter affidavit filed by the respondents, it is stated that the fourth respondent was compelled for shifting his shop which was initially sanctioned adjacent to the Mulugu Police Station and that they blocked the way leading to his shop due to security reasons. Accordingly, he submitted a representation for shifting his shop. Before shifting the shop, No-Objection was obtained from the petitioner and in view of the same, first respondent accorded permission for shifting the fourth respondent's shop, duly taking into consideration the No-Objection given by the petitioner and also the IML turn over of Rs.34,26,369/- the petitioner-shop which is more than ten times of the annual licence fee (i.e. Rs.2,50,000 X 10 = 25,00,000).

As per the guidelines issued by the first respondent in his letter dated 17-05-2000, in case the proposed premises falls within a distance of 100 meters from any existing IL-24 shop, the name of such shops and their APBCL sale value during the year 2000-2001 should be furnished and if it exceeds more than ten times of the annual licence fee, such permission can be granted within 100 meters and accordingly, based upon the said guidelines and No-

Objection granted in favour of the fourth respondent, permission was granted by the first respondent.

The petitioner has not denied the fact of giving No-Objection for shifting the fourth respondent's shop to the new place as the fourth respondent had promised to give 50% share in the fourth respondent's shop to the partner who gave his consent. All these disputed questions of fact cannot be gone into in a petition filed under Article 226 of the Constitution of India. Since the shifting of the shop is in accordance with the guidelines issued by the first respondent and the fourth respondent is continuing in the said shop, the order passed by the Commissioner of Prohibition and Excise does not suffer from any legal infirmities.

The Writ Petition has no merits and it is accordingly dismissed. No costs.

_____

(A. GOPAL REDDY, J)

July 9, 2004

MRR

Copy to:

1. The Commissioner of Prohibition & Excise,

Nampally, Hyderabad.

2. The Deputy Commissioner of Prohibition and Excise, Warangal.

3. The Prohibition and Excise Superintendent, Warangal District.

4. Two C.D. Copies to the G.P for Prohibition and Excise, High Court Buildings, Hyderabad. (OUT).

5. Two C.D. Copies.